STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of the Department of Insurance and Financial Services

In the matter of:

Electronic Waveform Lab, Inc.
Petitioner
v **File No. 21-1758**

Esurance Insurance Company
Respondent

Issued and entered
this 28th day of January 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On December 1, 2021, Electronic Waveform Lab, Inc. (Petitioner) filed with the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for an appeal concerns the determination of Esurance Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. This appeal concerns payment for durable medical equipment (DME). The Respondent issued a bill denial on November 17, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the DME.

The Department accepted the Petitioner's request for appeal on December 22, 2021. Pursuant to R 500.65, on November 3, 2021, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent submitted a reply to the Department on January 12, 2022.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on January 24, 2022.

II. FACTUAL BACKGROUND

The injured person was involved in a car accident on June 30, 2021. She injured her knees. Her therapist suggested the use of a DME device known as a small muscle fiber stimulator developed by Electronic Waveform Lab, Inc. The device is intended to be used in the home. The injured person received the device on October 26, 2021.

The Respondent denied Electronic Waveform Lab's request for payment, asserting that the device is not recommended as a first-line therapy. Further, the device would only be covered after a one-month trial established that the device was successful in reducing pain. The Respondent indicated that documentation of such a trial was not submitted by the Petitioner.

In the Provider Appeal Request, the Petitioner submitted information about its device and a statement from the injured person that she received some pain relief after her first use of the device.

III. ANALYSIS

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and overutilization.

The IRO reviewer assigned to review the case file is a physician in active practice who is board-certified in physical medicine and rehabilitation with additional certification in electrodiagnostic medicine and acupuncture. In the IRO report, the reviewer cited the Official Disability Guidelines as well as several physical medicine and rehabilitation textbooks. The IRO reviewer wrote:

> The patient is a 64-year-old female with dorsalgia and bilateral knee pain. At issue is the most appropriate practice guidelines for a durable medical equipment device and whether according to the most appropriate practice guidelines, the durable medical equipment device…was overutilized.
>
> * * *
>
> The most appropriate practice guidelines for a durable medical equipment device are the Official Disability Guidelines. See MAC R 500.61(i), which states that the "most appropriate practice guidelines for the treatment, training, products, services and accommodations provided to an injured person ... may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations." The Official Disability Guidelines are evidence-based and generally accepted by practitioners.
>
> * * *

> According to the most appropriate practice guidelines, which are the Official Disability Guidelines, the durable medical equipment device with date of service 10/26/21…was overutilized.…The Official Disability Guidelines list the following criteria for use of H wave:
>
> > A. Home H-Wave may be considered on a trial basis if other noninvasive, conservative treatments for chronic pain have not proven successful, including all the following (unless contraindicated):
> >
> > (1) Medication
> >
> > (2) Physical Therapy (i.e., exercise)
> >
> > (3) Transcutaneous electrical nerve stimulation (TENS)
> >
> > B. The one-month initial trial will permit the physician and physical therapy (PT) provider to evaluate any effects and benefits. If continued use is prescribed there should be evidence of less reported pain combined with increased functional improvement or medication reduction.
> >
> > C. While medical providers may perform H-Wave device stimulation, H-Wave devices are also available for home use. Rental would be preferred over purchase during a home trial."
>
> The medical records provided do document that treatment with medications and physical therapy failed to provide symptomatic relief. However, the medical records provided do not document that treatment with TENS failed to provide symptomatic relief, and therefore the H wave home care program on date of service 10/26/21 would be considered overutilized according to the Official Disability Guidelines. Further, the medical records do not provide documentation that the H wave treatment on 10/26/21 provided significant functional improvement or medication reduction and therefore the H wave home care program on date of service 10/26/21 would be considered overutilized according to the Official Disability Guidelines.

The IRO reviewer recommended that the Director uphold the Respondent's determination.

IV. ORDER

The Director upholds the Respondent's November 17, 2021 determination.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review

should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford